

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IT'S A NEW 10, LLC, a Florida Limited Liability Company,	:	
	:	ECF CASE
	:	
Plaintiff,	:	Civil Action No.: 17-cv-4231
v.	:	
	:	District Judge: J. Paul Oetken
HARMON STORES, INC., A Delaware Corporation and BED, BATH & BEYOND, a New York Corporation,	:	
	:	
Defendants.	:	
	:	
	:	X

**DECLARATION OF MICHAEL CIRILLI
IN SUPPORT OF DEFENDANTS' BRIEF IN OPPOSITION TO
PLAINTIFF'S ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION**

**(CONTAINS CONFIDENTIAL INFORMATION
NOT TO BE FILED ON ECF)
(REDACTED VERSION TO BE FILED ON ECF)**

I, MICHAEL CIRILLI, declare as follows:

1. I am the Divisional Merchandise Manager for Harmon Stores, Inc., in charge of health, beauty and private label products, including hair care products. I have held this position for about three years. By virtue of my position, I am also familiar with health, beauty and private label products, including hair care products sold at Christmas Tree Shops and Bed Bath & Beyond stores.

2. Before my position with Harmon, I also worked in the retail aspects of the health and beauty product industry, including hair care products, for 18 years, at such well-known retailers as Duane Reade and Rite Aid. Thus, I have 21 years of total experience in this sector.

3. I am familiar with the health and beauty care products, including hair care products, sold at Harmon, Christmas Tree Shops and Bed Bath & Beyond stores (collectively

hereafter the “Bed Bath & Beyond Stores”). Because of my experience, I am generally familiar with how hair care products, both national brands and private label brands, are sold by the Bed Bath & Beyond Stores and other retailers including those for whom I have worked in the past.

4. It is common in the health, beauty care and private label industry for retailers to offer national brand equivalents (“NBE”) to compete with products sold under proprietary, national brands. NBE products are commonly referred to as private label or store brands. Private label brands offer consumers product choice. A consumer can purchase a private label product similar to a branded product, but at a value price.

5. Private label or store brand products are, to the best of my information and belief, offered by every major retailer in the health and beauty care field. For example, based on my retail merchandising experience working for Harmon, Duane Reade and Rite Aid, I know that these well-known chains offer extensive private label options for consumers. Likewise, the Bed Bath & Beyond Stores offer extensive private label brand product choices for consumers. Harmon stores stock over 1,000 different private label brand product SKUs of which over 65 SKUs are for HARMON FACE VALUES hair care products. Exhibit A contains screen shots from Harmon Stores’ website, www.harmondiscout.com, of an exemplary array of HARMON FACE VALUES private label products for hair care products. Exhibit B is a screen shot from the Harmon Stores website showing “Featured Brands” which prominently includes the HARMON FACE VALUES private label brand.

6. Throughout the health and beauty care industry, including at the Bed Bath & Beyond Stores, private label products are sold in the same area as or next to the brand product with which the private label product competes. Thus, the HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product is sold next to the plaintiff’s

IT'S A 10 miracle leave-in conditioner plus keratin product. This product positioning is done to permit consumers to evaluate which product they believe best fulfills their purchasing desires.

7. The HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product is sold in 283 Bed Bath & Beyond Stores. Removing this product from store shelves in each of these 283 stores; ensuring that products in inventory are not inadvertently placed on shelves; and checking that unopened/unused products that are returned are not put back on shelves, would require a substantial expenditure of time and human resources. Removing HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product from shelves requires sending knowledgeable personnel to the hair care section where the HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product is sold and removing it from that shelf space; carefully perusing the entire hair care aisle and, indeed, every aisle in the store to inspect whether a consumer put a HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin in the wrong spot in the hair care aisle; disrupting the in-store customer experience during product removal; and inspecting the entire store to see if any HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product was placed back on a shelf in an area of the store unrelated to hair care. Similar vigilance is required in the stock room and with returns to ensure that product is not inadvertently reshelfed. This requires ongoing vigilance by both trained stock personnel and store managers. Costs involved in these activities in terms of actual expenditures and management attention are significant. For example, in Harmon stores alone, the task of removing HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin products, which currently number approximately [REDACTED] units, from the shelves of Harmon stores would take more than [REDACTED]. [Contains Confidential Information]

I declare under penalty of perjury that the foregoing is true and correct and that statements made based on information and belief are believed to be true and correct.

Dated: June 23, 2017

By:

Name:

Title:




Michael Cirilli
Divisional Merchandise Manager
For Harmon Stores Inc.

EXHIBIT A

Bed Bath & Beyond buybuy BABY Cost Plus World Market Christmas Tree Shops Of a Kind One Kings Lane

Spend \$50 More for Free Shipping 0 Items | \$0.00  YOUR CART



 **FREE STANDARD SHIPPING**
On Any Purchase of \$50 or more

 [FIND A STORE](#) | [CONTACT US](#) | [FAQs](#) | [Sign up for Offers](#)

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PERSONAL CARE

HEALTH

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[\\$5 and \\$10 \(24\)](#)

[\\$10 and \\$15 \(2\)](#)

[\\$15 and \\$20 \(4\)](#)

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Items per page:

24

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Relevance

1

2

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Displaying 1 - 24 of 41 results for harmon face values shampoo



Harmon Face Values Hair
Therapy Moisture Shampoo 16
oz

\$5.99

[BUY NOW](#)



Harmon Face Values Hair
Therapy Moisture Shampoo 32
oz

\$9.99

[BUY NOW](#)



Harmon Face Values Step One
Shampoo 16 oz

\$6.99

[BUY NOW](#)



Harmon Face Values Coconut
Milk Shampoo 21 oz

\$5.99

[BUY NOW](#)



Harmon Face Values Awapuhi
Botanical Shampoo 16 oz

\$6.99

[BUY NOW](#)



Harmon Face Values Color
Delight Herbal Shampoo 12 oz

\$1.99

[BUY NOW](#)



Harmon Face Values Brazilian
Shampoo 21 oz

\$5.99

[BUY NOW](#)



Harmon Face Values Everyday
Clean 2-in-1 Dandruff
Shampoo 14.2 oz

\$3.49

[BUY NOW](#)



Harmon Face Values Everyday
Clean Dandruff Shampoo 14.2
oz

\$3.49

[BUY NOW](#)



Harmon Face Values 16 oz Tea
Tree Shampoo

\$7.99

[BUY NOW](#)



Harmon Face Values Baby
Shampoo 15 oz

\$2.99

BUY NOW



Harmon Face Values Argan Shampoo 21 oz
\$6.99

BUY NOW



Harmon Face Values Therapeutic Gel Shampoo 8.5 oz
\$3.49

BUY NOW



Harmon Face Value Color Caring Shampoo 16 oz
\$9.49

BUY NOW



Harmon Face Values Colorcare Hydrating Shampoo 10.1 oz
\$15.59

BUY NOW



Harmon Face Values Colorcare Volume Shampoo 10.1 oz
\$15.59

BUY NOW



Harmon Face Values Hair Therapy Moisture Conditioner 32 oz
\$12.99

BUY NOW



Harmon Face Values Hair Therapy Moisture Conditioner 16 oz
\$6.99

BUY NOW

Harmon Face Values Itchy Scalp Shampoo 11 oz
\$4.99

BUY NOW

Harmon Face Values Green Apple 2-in-1 Shampoo + Conditioner 14.2 oz
\$3.49

BUY NOW

Harmon Face Values Dandruff Shampoo 23.7 oz
\$4.99

BUY NOW

Harmon Face Values Colorcare Hydrating Shampoo 10.1 oz
\$15.59

BUY NOW

Harmon Face Values 2-in-1 Dandruff Shampoo 23.7 oz
\$5.29

BUY NOW

Harmon Face Values Colorcare Volume Shampoo 10.1 oz
\$15.59

BUY NOW

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Nothing is more important to Harmon
Stores than you. This is why we have
partnered with the nonprofit
organization National Women's Health
Resource Center (NWHRC).


www.healthywomen.org

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EXHIBIT B

Bed Bath & Beyond buybuy BABY Cost Plus World Market Christmas Tree Shops Of a Kind One Kings Lane

Spend \$50 More for Free Shipping 0 Items | \$0.00  **YOUR CART** **FREE STANDARD SHIPPING**
On Any Purchase of \$50 or more **FIND A STORE | CONTACT US | FAQs | Sign up for Offers**

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A&D

Ace

ACT

Adsorbion

Ahava

Allergan

Alka-Seltzer

Always

AquaFresh

Arm & Hammer

Astroglide

Australian Gold

AAA

Acidophilus

Action

Advil

Airborne

Andrea

Allegra

Ambl

Aquaphor

Arrid

Atkins

Avalon Organics

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Bic

BIOSILK

Boudreaux's

Brut

BullFrog

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Bausch + Lomb

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Bikini Zone

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